

## **REMARKS**

### **A. BACKGROUND**

The present Amendment is in response to the Office Action mailed September 17, 2008. Claims 21-26, and 31-40 were pending and rejected in view of cited art.<sup>1</sup> Claim 23 is cancelled, claims 21-22, 24, 26, 32-33, and 37 are amended, and new claims 41-45 are added. Claims 21-22, 24-26, and 31-45 are now pending in view of the above amendments.<sup>2</sup>

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

### **B. CLAIM OBJECTIONS**

The Office Action objected to claim 23 under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant believes that the above amendments to the claims overcome the identified informalities. Accordingly, Applicant respectfully requests that the claim objection be withdrawn.

---

<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

<sup>2</sup> Support for the claim amendments and/ or new claims can be found throughout the specification and drawings as originally filed.

**C. PRIOR ART REJECTIONS**

**I. Rejection Under 35 U.S.C. § 103**

The Office Action rejected claims 21-24, 31-33, and 36 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,626,601 (*Gershony*). Claims 21, 25, 26, and 37-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0072767 (*Zhu*) in view of U.S. Patent No. 5,545,178 (*Kensey*). Claims 34 and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Zhu* in view of *Kensey* and further in view of U.S. Patent No. 6,391,037 (*Greenhalgh*). Applicant respectfully traverses.

With respect to the rejection under *Gershony*, the Office Action states that *Gershony* "discloses a device comprising: a housing comprising an outer tube (introducer or sheath, Col. 6 ll. 43-46) and an inner tube 86." (Office Action, 2.) Apparently, the Office Action asserts that the combination of an introducer sheath with the "outer tube 86" of *Gershony* is the same as "a housing comprising an outer tube and an inner tube having common distal ends," as recited, in part, by claim 21. Applicant respectfully disagrees.

Rather, in direct contrast, *Gershony* teaches a "vascular sealing device 66" having a shaft 69 "with a diameter . . . less than the diameter of the access lumen of the introducer or sheath with which it is used." (*Gershony*, col. 6, ll. 32-46.) The shaft 69 includes "an interior, hemispherical injectate lumen 80 which extends into the shaft 69" and "is formed between the outer shaft wall 86 or layer and an inner shaft wall 87." (*Id.*, col. 7, ll. 9-13.) Applicant respectfully asserts that the introducer and injectate lumen 80 are not the same as "a housing comprising an outer tube and an inner tube having common distal ends," as recited, in part, by claim 21. Accordingly, *Gershony* does not disclose, teach, or suggest each and every element of claim 21. Therefore, Applicant respectfully requests that the rejection of claim 21 under *Gershony* be withdrawn.

With respect to the rejection under *Zhu* and *Kensey*, the Office Action states that *Zhu* "discloses a device comprising: a housing comprising an outer tube 72 and an inner tube 86." (Office Action, 4.) Apparently, the Office Action asserts that *Zhu* teaches the use of an "outer tube 72" and "inner tube 86" that are the same as "a housing comprising an outer tube and an inner tube having common distal ends," as recited, in part, by claim 21. Applicant respectfully disagrees.

Rather, in direct contrast, *Zhu* teaches a "vascular wound closure assembly 30" including a "retractor 70 includ[ing] opposing elongate retractor arms 72 that are aligned longitudinally on the catheter 32." (*Zhu*, ¶¶ 41, 46.) The retractor 70 also includes "a retractor body 74 . . . configured to selectively open and close the retractor arms 72." (*Id.*, ¶ 46.) "A push member 84 is also arranged on the catheter 32 . . . compris[ing] a body portion 86 and a proximal handle portion 88." (*Id.*, ¶ 50.) The body portion 86 includes a "lumen 90 [that] preferably encircles the catheter 32 so as to allow the push member 84 to slide relative to the catheter 32." (*Id.*) Applicant respectfully asserts that the retractor arms 72 and body portion 86 of the push member 84, as taught by *Zhu*, are not the same as "a housing comprising an outer tube and an inner tube having common distal ends," as recited, in part, by claim 21. In addition, *Kensey* does not remedy the deficiencies of *Zhu* with respect to claim 21. Accordingly, *Zhu* and *Kensey* fail to disclose, teach, or suggest each and every element of claim 21. Therefore, Applicant respectfully requests that the rejection of claim 21 under *Zhu* and *Kensey* be withdrawn.

In addition, claims 22, 24-26, and 31-45 depend on claim 21 and are allowable for at least the same reasons set forth above with respect to claim 21. Therefore, Applicant respectfully requests that the rejections of claims 22, 24-26, and 31-45 be withdrawn.

#### **D. CONCLUSION**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner

Application No. 10/523,219  
Amendment "E" dated January 20, 2009  
Reply to Office Action mailed September 17, 2008

finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 20th day of January, 2009.

Respectfully submitted,

/Paul N. Taylor, Reg.# 57271/

PAUL N. TAYLOR  
Registration No. 57,271  
Attorney for Applicant  
Customer No. 57360  
Telephone No. 801.533.9800

PNT: kdj  
2187204\_2.DOC